

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

KENTON L. CARR,

Plaintiff,

vs.

NANCY A. BERRYHILL,
Acting Commissioner, Social Security
Administration,

Defendant.

Case No. 17-CV-72-JED-FHM

OPINION AND ORDER

A scheduling order was entered on August 7, 2017, setting the due date for Plaintiff's opening brief for October 10, 2017. [Dkt. 11]. Plaintiff failed to file his brief by the due date, there has been no request by Plaintiff for additional time in which to file his brief, and no brief has been filed to date.

The undersigned United States Magistrate Judge has observed that with increasing frequency Plaintiff's counsel has missed briefing deadlines in Social Security disability appeals. Counsel for Plaintiff has been repeatedly advised that missing briefing deadlines is not acceptable as it disrupts the orderly progression of cases, results in a *de facto* extension of time to file a brief, and essentially converts court staff into a tickler system for counsel's calendar. Counsel has also been repeatedly warned that by failing to file timely briefs in accordance with the deadlines set out in the scheduling order, he risks dismissal of his client's case for failure to prosecute.¹

¹ *McCombs v. Berryhill*, 16-CV-547-GKF-FHM (show cause order entered, brief filed); *Vesper-Hogan v. Berryhill*, 16-CV-608-JED-FHM (show cause order entered, case dismissed by Plaintiff); *Shellenbarger v. Berryhill*, 16-CV-706-JHP-FHM (show cause order entered, additional time requested, brief filed); *Sattar v. Berryhill*, 16-CV-441-CVE-FHM (brief due 7/27/2017, no brief filed, show cause order entered, case dismissed by Plaintiff); *Crowder v. Berryhill*, 16-CV-727-GKF-FHM (brief due 7/21/2017, motion to file out of time dated August 9, 2017, brief filed); *Robinson v. Berryhill*, 17-CV-16-CVE-FHM (brief due 7/5/2017, no brief filed, case dismissed by Plaintiff); *Bennett v. Berryhill*, 17-CV-34-CVE-FHM (brief due 7/5/2017, no brief filed, show cause

It is therefore ordered that on or before December 8, 2017, counsel for Plaintiff shall file a response to this order explaining:

- 1) why there have been so many missed briefing deadlines in the cases handled by his firm;
- 2) what measures have been taken to rectify the problem of untimely filing of briefs; and
- 3) what measures will be taken going forward to prevent such lapses.

This order does not constitute permission for Plaintiff to file a brief out of time. After receiving counsel's response to this Order, the court will consider whether briefing will be permitted in this case. Counsel is advised that the failure to timely respond to the requirements stated herein will result in a recommendation that this case be dismissed, and will result in similar recommendations for future failures to timely file briefs without the intermediary step of a show cause order.

SO ORDERED this 1st day of December, 2017.


FRANK H. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

order entered, brief filed).